

AMENDED IN ASSEMBLY APRIL 21, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1579**

**Introduced by Assembly Member Cogdill ~~Members Cogdill and Richman~~**

February 21, 2003

---

---

An act to ~~add Section 3821 to~~ amend Section 139.3 of the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1579, as amended, Cogdill. Workers' compensation: ~~unlawful acts: fraud~~ physician referral: outpatient surgery.

*Existing law provides that, to the extent these services are paid pursuant to the workers' compensation law, it is unlawful for a physician to refer a person for clinical laboratory, diagnostic nuclear medicine, radiation oncology, physical therapy, physical rehabilitation, psychometric testing, home infusion therapy, or diagnostic imaging goods or services whether for treatment or medical-legal purposes if the physician or his or her immediate family has a financial interest with the person or in the entity that receives the referral. Violation of this provision is a misdemeanor.*

*This bill would extend the application of this provision to outpatient surgery goods or services. By expanding the definition of a crime, this bill would impose a state-mandated local program.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

~~Existing law provides that it is unlawful to commit various acts that compromise the integrity of the workers' compensation system, including presenting any knowingly false or fraudulent written or oral material statements in order to obtain or deny a claim for workers' compensation.~~

~~This bill would require an applicant for employment, upon the request of an employer, to disclose whether he or she has ever been adjudicated to have committed any of those unlawful acts or been convicted of violating other specified unlawful acts relating to fraud.~~

~~The bill would also declare that it is the intent of the Legislature to enact legislation to increase civil penalties for workers' compensation fraud and to use this increased revenue for additional antifraud investigations.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.  
State-mandated local program: ~~no~~ yes.

*The people of the State of California do enact as follows:*

- 1    ~~SECTION 1. — Section 3821 is added to the Labor Code, to~~
- 2    *SECTION 1. Section 139.3 of the Labor Code is amended to*
- 3    *read:*
- 4    139.3. (a) Notwithstanding any other provision of law, to the
- 5    extent those services are paid pursuant to Division 4 (commencing
- 6    with Section 3200), it is unlawful for a physician to refer a person
- 7    for *outpatient surgery*, clinical laboratory, diagnostic nuclear
- 8    medicine, radiation oncology, physical therapy, physical
- 9    rehabilitation, psychometric testing, home infusion therapy, or
- 10    diagnostic imaging goods or services whether for treatment or
- 11    medical-legal purposes if the physician or his or her immediate
- 12    family has a financial interest with the person or in the entity that
- 13    receives the referral.
- 14    (b) For purposes of this section and Section 139.31, the
- 15    following shall apply:
- 16    (1) "Diagnostic imaging" includes, but is not limited to, all
- 17    X-ray, computed axial tomography magnetic resonance imaging,
- 18    nuclear medicine, positron emission tomography, mammography,
- 19    and ultrasound goods and services.



(2) “Immediate family” includes the spouse and children of the physician, the parents of the physician, and the spouses of the children of the physician.

(3) “Physician” means a physician as defined in Section 3209.3.

(4) A “financial interest” includes, but is not limited to, any type of ownership, interest, debt, loan, lease, compensation, remuneration, discount, rebate, refund, dividend, distribution, subsidy, or other form of direct or indirect payment, whether in money or otherwise, between a licensee and a person or entity to whom the physician refers a person for a good or service specified in subdivision (a). A financial interest also exists if there is an indirect relationship between a physician and the referral recipient, including, but not limited to, an arrangement whereby a physician has an ownership interest in any entity that leases property to the referral recipient. Any financial interest transferred by a physician to, or otherwise established in, any person or entity for the purpose of avoiding the prohibition of this section shall be deemed a financial interest of the physician.

(5) A “physician’s office” is either of the following:

(A) An office of a physician in solo practice.

(B) An office in which the services or goods are personally provided by the physician or by employees in that office, or personally by independent contractors in that office, in accordance with other provisions of law. Employees and independent contractors shall be licensed or certified when that licensure or certification is required by law.

(6) The “office of a group practice” is an office or offices in which two or more physicians are legally organized as a partnership, professional corporation, or not-for-profit corporation licensed according to subdivision (a) of Section 1204 of the Health and Safety Code for which all of the following are applicable:

(A) Each physician who is a member of the group provides substantially the full range of services that the physician routinely provides, including medical care, consultation, diagnosis, or treatment, through the joint use of shared office space, facilities, equipment, and personnel.

(B) Substantially all of the services of the physicians who are members of the group are provided through the group and are

1 billed in the name of the group and amounts so received are treated  
2 as receipts of the group, and except that in the case of  
3 multispecialty clinics, as defined in subdivision (l) of Section 1206  
4 of the Health and Safety Code, physician services are billed in the  
5 name of the multispecialty clinic and amounts so received are  
6 treated as receipts of the multispecialty clinic.

7 (C) The overhead expenses of, and the income from, the  
8 practice are distributed in accordance with methods previously  
9 determined by members of the group.

10 (c) (1) It is unlawful for a licensee to enter into an arrangement  
11 or scheme, such as a cross-referral arrangement, that the licensee  
12 knows, or should know, has a principal purpose of ensuring  
13 referrals by the licensee to a particular entity that, if the licensee  
14 directly made referrals to that entity, would be in violation of this  
15 section.

16 (2) It shall be unlawful for a physician to offer, deliver, receive,  
17 or accept any rebate, refund, commission, preference, patronage  
18 dividend, discount, or other consideration, whether in the form of  
19 money or otherwise, as compensation or inducement for a referred  
20 evaluation or consultation.

21 (d) No claim for payment shall be presented by an entity to any  
22 individual, third-party payor, or other entity for a good or service  
23 furnished pursuant to a referral prohibited under this section.

24 (e) A physician who refers to, or seeks consultation from, an  
25 organization in which the physician has a financial interest shall  
26 disclose this interest to the patient or if the patient is a minor, to the  
27 patient's parents or legal guardian in writing at the time of the  
28 referral.

29 (f) No insurer, self-insurer, or other payor shall pay a charge or  
30 lien for any good or service resulting from a referral in violation  
31 of this section.

32 (g) A violation of subdivision (a) shall be a misdemeanor. The  
33 appropriate licensing board shall review the facts and  
34 circumstances of any conviction pursuant to subdivision (a) and  
35 take appropriate disciplinary action if the licensee has committed  
36 unprofessional conduct. Violations of this section may also be  
37 subject to civil penalties of up to five thousand dollars (\$5,000) for  
38 each offense, which may be enforced by the Insurance  
39 Commissioner, Attorney General, or a district attorney. A  
40 violation of subdivision (c), (d), (e), or (f) is a public offense and

1 is punishable upon conviction by a fine not exceeding fifteen  
2 thousand dollars (\$15,000) for each violation and appropriate  
3 disciplinary action, including revocation of professional licensure,  
4 by the Medical Board of California or other appropriate  
5 governmental agency.

6 *SEC. 2. No reimbursement is required by this act pursuant to*  
7 *Section 6 of Article XIII B of the California Constitution because*  
8 *the only costs that may be incurred by a local agency or school*  
9 *district will be incurred because this act creates a new crime or*  
10 *infraction, eliminates a crime or infraction, or changes the penalty*  
11 *for a crime or infraction, within the meaning of Section 17556 of*  
12 *the Government Code, or changes the definition of a crime within*  
13 *the meaning of Section 6 of Article XIII B of the California*  
14 *Constitution.*

15 ~~read:~~

16 ~~3821. Upon the request of an employer, an applicant for~~  
17 ~~employment shall disclose both of the following:~~

18 ~~(a) Whether he or she has ever been adjudicated to be in~~  
19 ~~violation of Section 3820.~~

20 ~~(b) Whether he or she has ever been convicted of violating~~  
21 ~~Section 1871.4 of the Insurance Code or Section 550 of the Penal~~  
22 ~~Code with respect to a workers' compensation insurance claim.~~

23 ~~SEC. 2. It is the intent of the Legislature to enact legislation~~  
24 ~~to increase civil penalties for workers' compensation fraud, and to~~  
25 ~~use this increased revenue for additional antifraud investigations.~~